IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1398 OF 2004

M/s VHB Pharmaceuticals Pvt.Ltd. ...Petitioners

v/s

Smt Laxmi Gupta and ors. ...Respondents

Mr P.C. Pawaskar for Petitioners.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 1ST AUGUST 2006.

P.C. :-

1. By this petition, the petitioners challenge the award dated 20th October 2003 passed by the Labour Court, holding that the termination of the services of the respondent No.1 by the petitioners is illegal and directing the petitioners to pay an amount of Rs.2,06,800/- in lieu of reinstatement to the respondent No.1. The facts that are relevant and material for deciding this petition are that according to the respondent No.1, she was appointed as Professional Sales Executive by the petitioners with effect from 1st March 1996 and she was working till 12th January 1997. According to her, on 13th January 1997, she was not allowed to join duties. On 15th January 1997, according to the respondent No.1, when she reported on work, she was verbally told that her services are terminated. According to the respondent No.1, she was appointed on probation for a period of six months on 1st March 1996. That probation period expired on 31st August 1996. Thereafter, no order extending probationary period was issued, but she continued in service. As a result of termination of service, a dispute was raised, it was referred to the Labour Court. Before the Labour Court, the respondent No.1 filed her statement of claim contending that the termination of her service with

effect from 13th January 1997 is illegal and therefore, she is entitled to reinstatement in service with full back wages. The petitioners appeared before the Labour Court, filed their reply. In the reply, the case of the petitioners was that the respondent No.1 was appointed as Sales Representative on 1st October 1996 on probation. The first period of probation of six months was not satisfactory and therefore, in order to give her opportunity to improve, she was continued on probation. Ultimately, on finding her unsuitable for the job, her services were terminated with effect from 13th January 1997. It was contended that as the respondent was probationer, termination of her services does not amount to any punishment and therefore, termination is valid. According to the petitioners therefore, the respondent was not entitled to any relief. Before the Labour Court, it appears that the respondent No.1 examined herself as a witness. The petitioners also examined their witness. It is to be noticed that neither the petitioners nor the respondent No.1 have produced either the original appointment order or copy of the appointment order. The Labour Court decided the reference by award dated 20th October 2003. The Labour Court recorded a finding that the respondent No.1 is deemed to be confirmed in the employment of the petitioners on completion of six months' probation period and has recorded a further finding that her

termination of service by the petitioners was illegal. The Labour Court however fond that because she did not hold requisite educational qualification, she was not entitled to reinstatement but she is entitled to compensation and therefore, the Labour Court directed payment of compensation in the amount of Rs.2,06,800/-. The learned counsel appearing for petitioners submits that the finding recorded by the Labour Court that the respondent No.1 was a confirmed employee when her services were terminated in January 1997 is contrary to the statement on oath made by the respondent No.1 herself. The learned counsel submits that unless the respondent No.1 was able to establish that either by any law or by appointment order, the maximum period of probation was fixed for six months, there is no question of the respondent No.1 getting deemed confirmation on completion of six months period. The learned counsel further submits that even assuming that the Labour Court has rightly held that the respondent No.1 was a confirmed employee on the date of termination, the Labour Court has not pointed out any provision of law which was contravened. In the submission of the learned counsel, it was necessary for the Labour Court to find out as to which was the law violated by the petitioners in terminating the services of the respondent No.1. The learned counsel further submits that the Labour Court itself has found that the respondent No.1 is a Commerce

graduate and for the post of Medical Representative, the necessary educational qualification is B.Sc. or B.Pharm., still the Labour Court has awarded compensation. The learned counsel submits that even the principle that has been adopted by the Labour Court for computing the amount of compensation is not in accordance with law. The respondent No.1 is served, she is not appearing. I have perused the record. Perusal of the order of the Labour Court shows that according to the Labour Court, on completion of six month's probationary period, the respondent No.1 is deemed to be confirmed in the post and therefore, in January 1997, when her services were terminated, she was a permanent employee. The respondent No.1 has examined herself as a witness. In paragraph 7 of her deposition, she states :-

> "It is, however, true that my probation period was extended by letter dated 26.8.1996. Now I say that this letter was given to me on 27.6.2001 and it was renewed by one by post. The witness is now shown a letter dated 25.9.1996. This letter was not given to me. It is however, true that I was not given confirmation letter. It is true that I was on probation."

. Perusal of the examination-in-chief of the respondent No.1 shows that even in the examination-in-chief it is not stated that either her services were confirmed or that they were deemed to have been confirmed. Perusal of statement of claim submitted by the respondent No.1 shows that according to her, she was initially appointed on probation for a period of six months, the letter extending her probation was never given to her and therefore she is deemed to be permanent, but in her deposition, she does not reiterate that statement. What is pertinent to note is that she nowhere states as to how the order terminating her services is illegal. What is significant is that apart from claiming that she was on probation, apart from not claiming that her services are deemed to be confirmed, the respondent No.1 nowhere claims that there is provision in law which fixes the maximum period of probation as six months or there is such specific order. On the contrary, she says in her statement of claim that because the order extending her probation period was not given, she is deemed to be confirmed. It clearly implies that according to her, it was not possible for the employer to extend the probation period. But the law which prohibits the extention of the probation period is not pointed out. Therefore, in my opinion, the Labour Court was not justified in recording the finding that the respondent No.1 is deemed to have been

confirmed in service. Apart from the finding being contrary to the stand of the respondent No.1 in her deposition, it is also contrary to the law. It appears that the respondent No.1 was appointed on probation initially or a period of six months. Therefore, in the absence of any letter of confirmation, she would be deemed to be on probation and while she was on probation, her services were terminated. The Labour Court itself observed that because the respondent No.1 was not holding the requisite educational qualification, her work was not satisfactory. Therefore, there was justification for terminating the services of the respondent No.1 and therefore, in my opinion, there was no illegality in terminating the services of the respondent No.1. In any case, the Labour Court has not indicated any provision of law to which the termination order was contrary. If the respondent No.1 was not holding requisite educational qualification, there was no question of awarding any compensation. Compensation can be awarded in lieu of reinstatement. Therefore, for granting compensation, the Court must find that the employee is entitled to reinstatement. If the employee is not entitled to reinstatement, there is no question of granting compensation in lieu of reinstatement when the Court finds that the employee is entitled to reinstatement, but the Court, for some reason, is not inclined to grant reinstatement, it awards compensation.

Therefore, a finding that the employee is entitled to reinstatement is necessary before awarding compensation in lieu of reinstatement. The award of the Labour Court shows that the Labour Court finds that the respondent No.1 was not holding requisite educational qualification. Obviously therefore, she was not entitled to reinstatement and if she was not entitled to reinstatement, then there is no question of giving her any compensation in lieu of reinstatement. To my mind, it is clear that the award of the Labour Court suffers from non-application of mind to the relevant aspects of the matter. It also excludes from consideration most relevant and material aspects. Therefore, the petitioners are not entitled to any relief. In the result therefore, petition fails and is dismissed. Rule is discharged with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.